

## SUBDIVISION AGREEMENT

Tract Map Number 19435

THIS AGREEMENT is entered into as of this 14<sup>th</sup> day of February  
2022 by and between Powers Design & Development

(hereinafter referred to as "Subdivider") and the CITY OF  
UPLAND, a municipal corporation (hereinafter referred to as the "City").

### A. Recitals

- (i) The City approved a Tentative Tract Map pursuant to the California Subdivision Map Act as set forth in California Government Code Section 66410 et. seq. ("Map Act") identified as Tentative Tract Number 19435 in the City of Upland, State of California; and
- (ii) Subdivider seeks approval of a Final Map under the Map Act identified as Final Map Number 19435

### B. Agreement

It is agreed by and between the parties hereto as follows:

1. In consideration of the City's approval of and filing Tentative Subdivision Tract Map Number 19435 and Final Tract Number 19435, Subdivider undertakes and agrees that it will, at Subdivider's sole cost and expense, design, construct and install all the improvements in accordance with the plans, specifications on file with the City, incorporated herein and made a part hereof, and including all conditions of approval required by the Planning Commission and City Council of the City of Upland.
2. Subdivider also undertakes and agrees upon the same consideration to design, construct, and install all improvements in accordance with the ordinances and regulations of the City, and to do all other and further acts required of it pursuant to this Agreement.
3. Subdivider agrees in connection therewith to pay or cause to be paid all amounts becoming due to contractors, subcontractors, and persons renting equipment or furnishing labor or materials to the foregoing Final Tract with respect to such improvements.
4. Subdivider agrees that all such improvements shall be constructed and completed in accordance with the city standards required by the City Engineer. In case of dispute, the good faith judgment of the City Engineer shall be final and binding upon the parties.
5. Subdivider undertakes and agrees that all of the work of improvement shall be completed within three hundred sixty-five (365) days from the date of execution of this Agreement.
6. Should Subdivider fail to comply with any of the terms or provisions of this Agreement, Subdivider shall be liable to the City for the reasonable value of any work or improvements not completed or improperly done or performed. In the event of any such failure, the City shall give to Subdivider written notice thereof. Unless the work or improvements covered by said notice, including defective work and improvements, are commenced by Subdivider within fifteen (15) days of the date of said notice and diligently prosecuted to completion, the City may at its option:

a) Collect from Subdivider the reasonable value of the work and improvements not so done and performed by Subdivider, to be measured by the anticipated costs and expenses of completing the same; or

b) The City may complete said work and improvements not so completed by Subdivider and collect its costs and expenses in completing the same; or

c) The City may, as to some of such work and improvements, proceed under remedy (a) above, and as to the remainder, under remedy (b) above.

The City may change any election prior to trial of any lawsuit, and prior thereto no election of remedies shall be binding upon the City. In either event, there shall be included in said "costs and expenses," the reasonable overhead expenses of the City. In addition to the foregoing, Subdivider shall be liable to the City for reasonable attorneys' fees and court costs incurred by the City in enforcing the obligations of Subdivider under this Agreement.

7. All slope banks over three (3) feet in vertical height within said Tract Map shall be landscaped with landscaping approved by the City Engineer. Sprinklers shall be installed on all slopes over three (3) feet in vertical height along arterial streets and shall be of a type and according to a sprinkler plan approved by the City Engineer, with sprinkler turn-ons at the tops of the slopes, and connected with the remainder of the water systems of the lots of which such slopes are a part.

8. Subdivider shall, at its sole cost and expense, secure and furnish to the City, bonds in a form approved by the City, executed by a corporation authorized to transact surety business within the State of California, for the following amounts and purposes:

(a) A bond in the amount of \$ 427,000 guaranteeing full performance of all the terms of this Agreement, see Performance Bond No. \_\_\_\_\_.

(b) A bond in the amount of \$ 214,000 securing payment to the contractor, his subcontractor and to persons renting equipment or furnishing labor or materials to them with respect to said public improvements, see Labor and Materials Bond No. \_\_\_\_\_.

(c) A cash deposit in the amount of \$ 5000 securing the setting of monuments.

9. Acceptance of any work or improvements by the City shall not constitute an acknowledgment by the City that the same are properly done or performed, except as to any items or matters readily apparent from an inspection thereof. Except as to such matters so readily apparent, Subdivider shall repair any defects which occur in the work of improvements within a one (1) year period thereof following acceptance by the City.

10. As a condition precedent to the acceptance of the improvements hereunder as being complete and prior to the release of any bonds required under paragraph 8, hereof, securing the faithful performance of Subdivider's obligations hereunder, Subdivider shall give a bond with a corporate bonding company or similar instrument, satisfactory to the City in the amount of \$ 106,750 as guarantee and warranty of the work for a one (1) year period following the completion and acceptance thereof against any defective work or labor done, or defective materials furnished.

11. Except as to the sole and exclusive negligence of City, its elected officials, officers agents and employees, Subdivider hereby agrees to indemnify, defend and

hold harmless, the City, its elected officials, officers, agents and employees from and against any and all claims, demands, suits, actions or proceedings of any kind or nature, including, but not by way of limitation, all civil claims, workers' compensation claims, costs, expenses or damages to property or injuries to or death of any person or persons, including attorney's fees and all other claims, whether groundless or not, arising out of or related to the acts, errors or omissions of Subdivider, its officers, agents, employees, consultants, subcontractors or other persons, companies or other entities using roadways/streets of the subdivision, performing labor, transporting and/or supplying material, designing, constructing or installing the improvements contemplated in this Subdivision Agreement. Where the Subdivider divides the project in phases and or allows construction vehicles or construction traffic use the same roadways/streets used by residents of the subdivision causing accidents, the Subdivider shall indemnify the City, its officers, its employees, and its agents from any and all liability, claims, damages, or injuries to any person or property arising from the Subdivider's actions or actions of his employees, agents, and contractors.

12. All notices to Subdivider may be sent to \_\_\_\_\_  
Powers Design & Development  
790 E. Mesa Court, Upland  
California, 91786 or at such other address of which the City shall actually receive notice in writing specifically calling attention to this Agreement.


IN WITNESS WHEREOF, the parties have executed this Agreement as of the date and year first above written.

BY   
GREG POWEAS, CMO

**See Attached  
Notary Certificate**

BY \_\_\_\_\_  
\_\_\_\_\_

CITY OF UPLAND, a municipal corporation

BY   
Michael Blay City Manager

ATTEST   
Keri Johnson, City Clerk

## ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

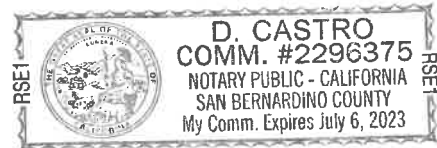
State of California  
County of San Bernardino )

On 02/08/2022 before me, D. Castro, Notary Public  
(insert name and title of the officer)

personally appeared Greg Powers,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are  
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in  
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the  
person(s); or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature

D. Castro

(Seal)

Subdivision Agreement